

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Sharon & Larry Susie,
Appellant,

v.

Sioux City Board of Review,
Appellee.

ORDER

Docket No. 14-107-0057
Parcel No. 48947-18-100-005

On December 2, 2014, the above-captioned appeal came on for telephone hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellants Sharon and Larry Susie were self-represented. Attorney Jack Faith represented the Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Sharon and Larry Susie are owners of a residentially classified property located at 2850 Malloy Road, Sioux City, Iowa. According to the record, the subject property is a 2.487-acre site with multiple outbuildings. The Susies protested their 2013 and 2014 assessments to the Sioux City Board of Review. The real estate was valued as follows:

Assessment Year	Total	Land Allocation	Building Allocation
2013	\$48,000	\$44,900	\$3100
2014	\$48,000	\$44,900	\$3100

The Susies essentially wanted the 2013 and 2014 assessments to revert to the 2012 assessment, which was \$11,000. They claimed the assessments were not equitable compared to like properties in

the taxing jurisdiction; that the property was assessed for more than the value authorized by law; that there was an error in the assessment; that there was fraud in the assessment; and that there had been a downward change in value since the last reassessment under Iowa Code sections 441.37(1)(a)(1)(a), (b), (d) and (e) and section 441.37(1)(a)(2). The Board of Review granted the protest, in part, by reducing the 2014 assessment to \$19,900, representing \$6,800 in land value and \$3,100 in improvement value.

The Susies then appealed to this Board. Sharon Susie submitted a letter from her physician explaining she was unable to timely file the 2013 petition due to medical reasons.

Sharon Susie testified the assessor valued two of their parcels as one in calculating the assessment. He then applied a three-tier pricing system to value the property using square-foot values. The initial 2014 assessed value of the property (\$48,000) was less than the Susie's \$55,000 purchase price for them in 1998. In retrospect, she believes she overpaid for the property.

Susie explained the property is bare land without gas or electric service and the water service is substandard. She stated that no one would ever build a home on this site because of the cost to develop it. The record includes aerial photographs showing a single family residence across the street from the subject and the record also includes a residence located adjacent to the Susies' property at 2750 Malloy Road. This appears to demonstrate the feasibility of building a home in this area.

Susie also testified property is used as grazing land for her four horses and does not generate any income. Susie does not believe the property should be classified residential because there is no residence on the land. She wants the land to be classified and assessed as a vacant lot. We note that Iowa law does not contain a "vacant lot" classification and assessors are required to classify parcels according to Iowa Admin. R. 701-71.1.

The assessor used a three-tier site valuation method which is commonly used to value land. Before the Board of Review reduction, the first 20,000 square feet were valued at \$1.61 per-square-

foot, the next 80,000 square feet were valued at \$0.20 per-square-foot and the remaining 8,333 square feet were valued at \$0.08 per-square-foot. After the Board of Review reduction, the Susies' two parcels are assessed at less than \$0.13 per-square-foot.

Conclusion of Law

The Appeal Board has jurisdiction of the 2014 appeal under Iowa Code sections 421.1A and 441.37A. As it relates to the 2013 appeal, we find we lack jurisdiction to grant the relief sought by the Susies for the reasons set forth herein.

This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may

be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

2013 Appeal

Generally, an assessment protest must be filed in the year of the assessment. Iowa Code section 441.37(1) provides:

Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 7, to and including May 5, *of the year of the assessment*. (emphasis added).

The Susies claim they were unable to file a protest of their 2013 assessment prior to May 5, 2013, due to Sharon's medical status. Therefore, they ask this Board to make an exception to the May 5th deadline, consider their 2013 appeal, and lower the subject's assessment to \$11,000. Although we are sympathetic to the Susies' situation, there is no statutory exception to the May 5th deadline that permits a late filing due to medical emergencies. As a result, unless they can show there was a clerical or mathematical error under Iowa Code section 441.37(2), this Board is without jurisdiction to consider the Susies' appeal of their 2013 assessment.

Error Claim

Section 441.37(2) is the only avenue for the Susies to protest a prior year assessment. It states:

A property owner or aggrieved taxpayer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in which the taxes have not been fully paid or otherwise legally discharged. § 441.37(2).

The error contemplated by this provision is a clerical or mathematical error. The Iowa Supreme Court has held that a clerical error is one of writing or copying resulting in the recording of an assessment figure not intended by the assessor. *American Legion, Hanford Post 5 v. Cedar Rapid*

Bd. of Review, 646 N.W.2d 433, 436 (Iowa 2002). On the other hand, an assessment entered as intended by the assessor is not the result of a clerical error even though an error of judgment or law may have affected the assessor's determination of the assessment. The Court held, because an error in judgment or a mistake of law is an error of substance; it is not a *clerical* error. *Id.* at 439.

The Susies' Board of Review protest does not identify any mathematical or clerical errors. (Exhibit B). A typed version of a Board of Review petition form states there was an "administrative error" because the 2013 assessment reverted back to the 2011 value of \$48,000. (Exhibit H). This does not appear to simply be a replication of the original protest, but instead adds or amends the Susies' claims. Even if this were permissible, the evidence indicates the assessment was intentionally modified during the 2013 revaluation and was not a mathematical or clerical error. (Oct. 3, 2014, email from Alan Jordan). The Susies also appear to identify an incorrect date on a Board of Review document as a clerical error (Exhibit E), but we find that the alleged error does not concern the assessment and valuation of the property. She also testified that a misstatement of an address on a 2002 City Ordinance was a clerical error, but we find no merit to the claim that this alleged error impacted the assessment at issue here. (Exhibit O).

The Susies' Notice of Appeal & Petition to this Board states that the Board of Review made an error "that 2.487 acres equals \$16,800." They question the validity of the Assessor's method of valuing their two parcels together and the resulting valuation. Their claimed error essentially challenges the underlying method used by the assessor and Board of Review to determine their assessment. This would be considered an error in judgment, which is not a ground contemplated by section 441.37(2). Following the directive of the Iowa Supreme Court, we are barred from considering the Susies' 2013 appeal because the error they claim is not a clerical or mathematical error. We add, for informational purposes only, that section 428.7 permits assessors to value separately described

parcels as a unit and doing so generally results in a lower total assessment than valuing the parcels individually.

Interim Year Appeal Ground

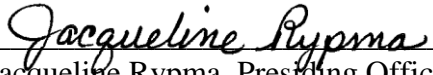
The Susies also seek a reduction in their 2014 assessment to \$11,000. Because the subject property's assessment did not change from 2013 to 2014, the Susies are limited to a downward change in value. While we can consider the change in value claim, we cannot consider the equity, over-assessment, or fraud claims.

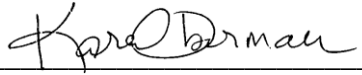
“For even-numbered assessment years, when the property has not been reassessed” a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code § 441.37(1)(a)(2); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). “When this ground is relied upon, the protesting party shall show the decrease in value by comparing the market value of the property as of January 1 of the current assessment year and the actual value of the property for the pervious assessment year.” *Id.*; see also *Equitable Life Ins. Co.*, 252 N.W.2d at 450 (holding for a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation). Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

The Susies did not provide any evidence of value for the property on either January 1, 2013, or January 1, 2014, such as appraisals, comprehensive market analysis, or comparable property sales. Evidence of both values is required in order to show change in value in an interim year appeal.

THE APPEAL BOARD ORDERS the 2014 assessment of the property located at 2850 Malloy Road, Sioux City, Iowa, of \$19,900 is affirmed.

Dated this 30th day of December, 2014.


Jacqueline Rypma, Presiding Officer


Karen Oberman, Board Member

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